

## **INFORMATION BULLETIN #51T**

### **SALES TAX**

**JULY 2004**

**(Replaces Bulletin 51T dated January 2003)**

**DISCLAIMER:** Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Telecommunication Services

**REFERENCES:** IC 6-2.5-4-6; IC 6-2.5-4-13; IC 6-2.5-5-13; IC 6-8.1-15

### **Telecommunication Services**

IC 6-2.5-4-6 subjects a wide range of intrastate telecommunication services to sales tax. The statute states that a person is a retail merchant making a retail transaction when the person provides intrastate telecommunication service. Telecommunication service is defined as the transmission of messages or information by or using wire, cable, fiber-optics, laser, microwave, radio, satellite, or similar facilities. It is not required that the person furnishing such service be a public utility for the service to be subject

to sales tax.

HEA1114-2004, effective March 9, 2004 provides that if charges for telecommunication services that are not taxable are aggregated with charges that are taxable, the charges for the nontaxable services are exempt from the sales tax if the provider can reasonably identify the charges not subject to the sales tax from the service provider's books and records kept in the regular course of business.

A person is a retail merchant making a retail transaction when the person sells a prepaid telephone calling card at retail, a prepaid telephone authorization number at retail, or reauthorizes either of the above.

Effective August 1, 2002 there was a standardized method for taxes, charges, and fees levied on wireless telephone service. The method is that all fees are charged and taxed based on the customer's place of primary use.

#### Example 1

Company A provides cellular phone service. Company A is not a public utility. Company A is required to collect and remit sales tax on its cellular service. The statute imposes sales tax on the transmission of messages or information by microwave, radio, satellite, or similar facilities. Cellular communications are covered by the statute and the statute does not require that a person be a public utility.

### **Value Added Services**

Value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission are not telecommunication services and are therefore not subject to sales tax.

### Example 2

Company B is a local telephone service provider. Company B provides several additional services and service enhancements to its customers. These include: call waiting, caller ID, call forward, distinct ringing, and voice mail. Company B's local phone service is subject to sales tax. However, not all of the additional services will be subject to sales tax if separately stated on the customer's monthly bill. Call waiting, caller ID, call forwarding, distinct ringing, and similar service enhancements are acting upon the transmission itself and do not affect the information contained in the transmission. These services or enhancements are therefore subject to sales tax. Voice mail and similar services are value added services which utilize computer processing applications to act upon the information for purposes other than transmission. The main distinction between voice mail and the other services is that the other services enhance the telecommunication service itself rather than provide a distinct non-telecommunication service. Therefore, voice mail and similar services are not telecommunication services under the statute and not subject to sales tax if separately stated on the customer's monthly bill. These charges must be separately stated or they will be subject to tax as part of a taxable unitary transaction.

The voice mail service should not be confused with the transmission of voice mail messages. Company B must pay sales or use tax on the intrastate transmission of the messages unless Company B's purchase of telecommunication services is exempt from sales tax. (See Example 6.)

### Example 3

Company C is a local convenience store that offers to fax customer's documents for a fee. This charge is not subject to sales tax. Company C is not providing telecommunication services, rather, Company C is providing a service whereby it digitizes a document and sends it to its intended destination using a telecommunication service. Company C is the end user of the telecommunication service and must pay sales tax on any intrastate transmissions.

#### Example 4

Company Z provides access to a computer database. Customers of Company Z access the database over telephone lines using a modem. Company Z charges its customers for the amount of time they are connected to the database. Company Z is not required to collect sales tax on its charges. Company Z is providing a value added service that is not subject to sales tax. The use of the telephone line to provide the service is subject to sales tax.

### **Public Utilities**

The sale of telecommunication services to public utilities or any provider of telecommunication services are not subject to sales or use tax.

#### Example 5

Company D provides local telephone service to Company W. Company W is a public utility providing water service to the community. The sale of local telephone service to Company W is not subject to sales tax because Company W is a public utility.

#### Example 6

Company E provides cellular phone service to Company D. Company D provides local telephone service to Company E. Neither transaction is subject to sales tax because each is selling a telecommunication service to another provider of a telecommunication service.

#### Example 7

Company B is a local telephone service provider. Company B offers voice mail service to its customers. This service is not taxable. (See Example 2.) However, the fact that the voice mail service is not subject to tax does not exempt the use of telecommunication service in furtherance of that service. In this case, Company B is a telecommunication service provider and therefore its purchase or use of telecommunication service is exempt even

when used in furtherance of a non-taxable service. If Company B was not a telecommunication service provider or a public utility, it would be required to pay sales or use tax on its purchase of telecommunication service in furtherance of its voice mail service.

### **Tangible Personal Property**

A telecommunication service provider is not making a retail transaction subject to sales or use tax when it provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication service.

#### **Example 8**

Company F is a paging services provider. Company F is not a public utility. The paging service is a telecommunication service and subject to sales tax. Company F provides its customers with a pager as part of the service. If there is a single charge for the service, then only that portion attributable to air time is subject to sales tax. The portion attributable to the providing of the pager itself is exempt. If Company F charges separately for air time and rents the pager, then both charges will be subject to sales tax. The difference being that providing only tangible personal property is exempt. In the latter case, the pager is rented not provided. (**Note:** Public utilities are not retail merchants making retail transactions when they lease or rent tangible personal property to another. Therefore, this analysis does not apply to public utilities. If the telecommunication service provider is a public utility, the charge for tangible personal property will be exempt unless the tangible personal property is being sold to the customer.)

The way that Company F contracts with its customers will determine whether Company F will pay sales or use tax when it purchases the pagers. If Company F charges separately for the pagers, it may purchase them exempt for resale or rental. However, if Company B provides the pagers as part of the service and does not charge separately for the pagers, it must pay sales or use tax on the purchase price of the pagers. (For additional information on purchases by telecommunication service providers see Example 10.)

### **Miscellaneous Charges**

Charges for installing or servicing tangible personal property related to telecommunication service are not subject to sales tax.

#### **Example 9**

Company B is a local telephone service provider. Company B charges customers for initial hook-up and an additional charge if any labor is needed to physically connect the customer. The hook-up charge is subject to sales tax because it is a charge for telecommunication service. The charge for labor necessary to physically connect the customer is not taxable since it is not a charge for a telecommunication service.

Company B also offers a service whereby it will maintain the phone lines within the customers house for a fixed monthly fee. This charge is not for telecommunication service and is therefore not subject to sales tax.

Any parts used in providing these services are not subject to sales tax if provided by Company B. (See Example 8.)

### **Purchases by Telecommunication Service Providers**

Transactions involving acquisition of tangible personal property by telecommunication service providers are exempt from sales tax if the property is classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana Utility Regulatory Commission. Mobile telecommunications switching office equipment and radio or microwave transmitting equipment, including, towers and antennae are also exempt. If the provider is not subject to the control of the Indiana Utility Regulatory Commission, then the exemption applies to any property similar to that mentioned above.

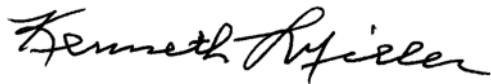
#### **Example 10**

Company B is a local telephone service provider. Company B is subject to

the authority of the Indiana Utility Regulatory Commission. Company B will look to the uniform system of accounts for local telephone companies to determine whether property it leases or purchases is subject to sales or use tax.

#### Example 11

Company F is a paging services provider. Company F rents space on a local tower for its antenna. The rental charges are not subject to sales tax. The purchase or rental of the antenna is also exempt from sales tax.

A handwritten signature in cursive script, reading "Kenneth L. Miller".

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Kenneth L. Miller  
Commissioner